

BENJAMIN C. FRANKLIN.

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The subject of this memoir was born in the State of Georgia, on the 25th of April, 1805, and was educated at Franklin College, at Athens. Having graduated from this institution he studied law, was admitted to the bar and began the practice of his profession at Macon, Georgia, in copartnership with ex-Governor Charles J. McDonald, of that State.

In 1835 his sympathies were enlisted in behalf of the Texans in their struggle for independence, and he determined to identify his prospects with their efforts. In April of that year he landed at Valasco, at the mouth of the Brazos River, and soon afterward joined an expedition against the Indians, who, instigated by the Mexicans, were devastating the border settlements. He was at the first revolutionary consultation at Columbia, and when the Texan army was organized near Gonzales for the purpose of resisting the Mexican invasion under General Santa Anna, he took an active and energetic part in raising a company, of which Robert J. Colder was elected captain, and which formed a part of Colonel Burleson's regiment. Early in April, 1836, he was commissioned a captain by President Burnett and detailed to organize a company of scouts; but was prevented from complying with his instructions by the advance of the Mexicans, which precipitated the battle of San Jacinto, in which he fought in the ranks under his former captain, using his Mississippi rifle with, no doubt, the same deliberation and earnestness which characterized his actions through life.

Soon after the battle of San Jacinto he was appointed judge of the District of Brazos, afterward the Second District of the Republic, and was thus one of the first judicial functionaries of the new government. He served upon the bench for the space of three years, during which he paid a

short visit to his old home in Georgia, and was married there on the 31st of October to Miss Eliza C. Brantley, a daughter of Rev. Wm. S. Brantley, of South Carolina, who was a noble and accomplished lady, who accompanied him in his return to Texas, and cheerfully and devotedly shared with him the dangers, hardships and deprivations necessarily incident to life in the new and struggling Republic until her death, which occurred in 1843.

In 1840 he retired from the bench and established his residence in Galveston, where he actively engaged in an extensive practice which embraced the whole of South-eastern Texas, directing his attention largely to the location of lands and to the important litigation which necessarily grew out of the intricate land system of the country. In conjunction with J. C. Watrous he represented Edward Hall in his contest with Dr. Levi Jones in regard to the location of land scrip upon Galveston Island. This contest resulted in a compromise by which that part of the island west of the city league was divided into fourteen sections, each containing about twelve hundred and eighty acres—the odd numbered sections, from one to eleven, being allotted to Hall, and the even numbered sections, from two to fourteen, to Jones.

The government of the Republic had, at an early day, caused the entire island to be laid out in lots of ten acres, and provided for the sale of them for the purpose of raising money to relieve the necessitous condition of the public finances; but, after having sold a number of these lots at what was considered an inadequate price, it abandoned the policy of disposing of them in this manner, and with the exception of the lots thus sold, the titles to the entire island, west of the city league, have their origin in the Hall-Jones compromise.

Judge Franklin was also one of the counsel employed by the city of Galveston in its litigation with the wharf company and others, which involved the title to the flats, or shallow water extending along the bay or harbor fronts of the city, and which also resulted in a compromise, by which a third interest in them was vested in the city, with a provision against alienation without the consent of four-

fifths of its qualified voters. He represented Galveston County four terms in the Legislature, and was chairman of the judiciary committee during the whole of his legislative career. This position enabled him to exercise great influence in originating and shaping the laws of the State; and many of those which were enacted during that period bear the impression of his judgment and genius. The scope and intensity of his patriotism, his penetrating perception, sound judgment, and untiring industry rendered him an efficient legislator, and his energies were devoted to the promotion of every interest of the State. Immersed in the requirements of his long public services and the demands of an extensive practice, he yet found time for general culture, and was a man of varied accomplishments and a fine scholar. His æsthetic taste led him to admire the beauties of literature, and impressed his address with chastity and critical correctness.

Although he was a true Southerner he took no active part in the war between the States, being too old for military service, and a great sufferer from rheumatism during the entire period of the struggle. He had retired to a small farm near Livingston, in Polk County, and while he continued to practice law when urged by his old clients, he made no effort to re-establish his extensive practice. His sufferings from rheumatism, aggravated by a malarial attack, his losses by the war, and above all his despondency in regard to the political and social future of his country left but little incentive to begin the struggle of life anew. He led a retired life upon his farm until 1870, when he returned to Galveston, and seeing some chance to aid his countrymen in their efforts to throw off the distasteful rule which had been fastened upon them during the military occupation of the State, he once more embarked in active life, and took part in the first decisive movement on the part of the people to regain the control of the State. This was the organization of the tax-payers of Galveston to resist by all lawful means the levies made to sustain a standing army of militia, and a cumbrous and irresponsible school system designed by means of a host of officials to perpetuate the rule of the Republican party

in the State, which was utterly repugnant to a large majority of the people. This movement was followed throughout Texas, and he lived to see the clouds that lowered in the political heavens of his State pass away behind the horizon, and its people once more on the highway to that prosperity which destiny and nature had shaped for them. He died unexpectedly on the 25th of December, 1873, soon after he had been elected to represent the Galveston District in the State Senate, and in the midst of his plans to devote the riper years of his life to the service of his country.

Judge Franklin was a lawyer of fine ability, and thoroughly acquainted with the history and character of Texas jurisprudence. He had watched and weighed every feature that entered into its composition, and there was no one more familiar with the poised effects and combined import of its blended elements. He was never at a loss for the proper methods for reaching the true issue in a controversy, and rarely erred in the selection of his legal standpoints. He was, therefore, a safe counselor, and possessed the highest respect of the bench and bar, and the implicit confidence of the people.

Although he was stern in the maintenance of that which he believed to be right, and in the pursuit of the dictates of duty, his moderation was no less marked than his integrity. While he was a man of earnest and intense convictions, his actions and expressions were always tempered with mildness and discretion. Hence he was respected and esteemed by men of all classes and politics.

The Constitution of 1869 provided that, within five years from the time of its adoption, the laws, both civil and criminal, should be revised and published in such manner as the Legislature might direct. A bill to meet this requirement of the organic law was introduced in the Legislature in 1872, but for some reason or other failed of enactment. To properly revise and digest the laws of a State is a task requiring the highest legal and legislative skill, and in the bill which was introduced for that purpose, the name of Judge Franklin stood, by common acceptance, at the head of the list of the proposed revisors, thus testifying to the

general appreciation of his ability and eminent qualification for the performance of the responsible and arduous duty.

Nor was this estimate of his character confined to his friends or to the Democratic party. The Republican Governor, E. J. Davis, undertook by virtue of his own authority to repair the omission of the Legislature, and proceeded to appoint a commission to revise the laws of the State. This commission he tendered to Judge Franklin, as one whose appointment he knew would be approved by the impartial and enlightened judgment of all good men of both parties in the State, and in the commission he declared, that "reposing special trust and full confidence in the loyalty, integrity and ability of Benjamin C. Franklin," he did "by virtue of the authority vested in him by the Constitution and laws of the State, constitute and appoint the said Benjamin C. Franklin, commissioner, to revise, digest and arrange the laws of the State, as required by section 35, of article 411, of the Constitution."

Judge Franklin did not believe that the Governor had the power to make the appointment, and promptly declined it; he was not capable of thus violating the law, or of acting under such doubtful authority. But the tribute to his merits, which the selection imports, is no less conclusive of the just estimation in which he was held by all parties.

Judge Franklin was a man of refined social qualities. He was tender in his sympathies, warm in his attachments, and possessed a charity responsive to every appeal of virtue. He was a man of most equable temperament, quiet and methodical in all the affairs of life, and pursued the even tenor of a philosopher. In his views and sentiments he exemplified the best type of early Texas character. He cherished in the highest degree the honor of the State, and was devoted to its institutions and its people.

He was married on the 3d of November, 1847, to Miss Estelle B. Maxwell, of Kaskaskia, Illinois, who was at that time visiting the family of her cousin, Michael B. Menard, Esq., of Galveston. This excellent lady still survives him, and is now residing in her native town, Kaskaskia.